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PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re Application of:**

Noteborn et al.

**Serial No.:** 10/083,849

**Filed:** October 19, 2001

**For:** MODIFICATIONS OF APOPTIN

**Confirmation No.:** 4522

**Examiner:** T. McKelvey

**Group Art Unit:** 1636

**Attorney Docket No.:** 2906-4996.1US

**NOTICE OF EXPRESS MAILING**

Express Mail Mailing Label Number: EL995987440US

Date of Deposit with USPS: January 24, 2006

Person making Deposit: Tim Palfreyman

**RESPONSE TO ELECTION OF SPECIES REQUIREMENT**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Communication mailed October 19, 2005 has been received and reviewed. Claims 5-7 and 26 are pending in the application. Applicants were required to elect from 6 species of the claimed invention. Applicants elect, without traverse, Species 3, *i.e.* functional equivalents of Apoptin comprising replacement of a threonine located at the position 108 only. Claims 5-7 and 26 are readable upon the elected species.

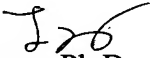
The Communication states that "(c)urrently, no claim is generic". (Page 2, 3<sup>rd</sup> line from the bottom). Applicants respectfully submit that claims 5-7 are generic to Species 1-6 designated in the Communication. Claim 5 recites "(a) vector comprising a nucleic acid encoding Apoptin or functional equivalent and/or functional fragment thereof, which Apoptin can be

phosphorylated". However, claim 5 does not specify a particular species of a functional equivalency. Claim 6 and 7 recite a gene delivery vehicle and a host cell, respectively, comprising the vector in claim 5. Therefore, claims 5-7 are generic and readable on the elected species.

The applicants hereby petition for a three month extension under 37 C.F.R. § 1.136(a). The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment to deposit account 20-1469.

If questions should remain after consideration of the foregoing, the Examiner is kindly requested to contact applicants' agent at the address or telephone number given herein.

Respectfully submitted,

  
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Date: January 24, 2006

LF/lf

Enclosure: Petition for Extension of Time

Check in \$1,020

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